



**Office of Appeals  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001**

In the Matter of:

**Robert Board,**  
Petitioner

HUDOA No. 10-M-CH-AWG94  
Claim No. 721004770

Robert Board  
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Katy, TX 77450-5513

*Pro se*

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For the Secretary

**DECISION AND ORDER**

On May 26, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship

to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* Pursuant to 31 C.F.R. § 285.11(f)(4) and (f)(10), on June 15, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

### **Background**

On June 18, 2002, Petitioner executed and delivered to the Secretary a Partial Claim Promissory (“Subordinate Note”) in the amount of \$5,743.90, in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), dated July 16, 2010 ¶ 2, Ex. A; Dillon Decl., ¶ 4) The Subordinate Note cites specific events that would cause the debt to become due and payable. (*Id.* at Ex. A. ¶ 4.) One of these triggering events was when the Petitioner paid all amounts due under the primary note insured by the Secretary. (Sec’y Stat. ¶ 5; “Dillon Decl.,” ¶ 4) On or about December 15, 2003, the FHA insurance on the primary note and related mortgage insured by the Secretary was terminated when the lender informed HUD that the mortgage had been paid in full. (*Id.*) Thus, the Subordinate Note became due and payable in full at that time. (Sec’y Stat., ¶ 5, Ex. A ¶ 4(A)(i), Dillon Decl., ¶ 4.)

The Secretary has attempted to collect the amounts due under the Subordinate Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 6, Dillon Decl., ¶ 5.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$5,664.35 as the unpaid principal balance as of May 30, 2010.
- (b) \$18.88 as the unpaid interest on the principal balance at 4% per annum through May 30, 2010, and
- (c) interest on said principal balance from June 1, 2010 at 4% per annum until paid.

(Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated June 25, 2010, ¶ 5.)

A Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings dated May 14, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 8, Dillon Decl., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 7.) The Notice was sent to Petitioner by Linebarger Goggan Blair & Sampson LLP on behalf of the Secretary. (*Id.*) The Notice informed Petitioner that he should call HUD to discuss acceptable repayment plans. The Notice also indicated that, if Petitioner paid his debt in full or entered into a repayment plan acceptable to HUD before June 13, 2010 a garnishment order would not be issued to the Petitioner’s Employer. (*Id.*) As of June 25, 2010, Petitioner had not entered into a written repayment agreement based on the May 14, 2010 Notice. (*Id.*)

The Secretary has attempted to obtain Petitioner's current pay stub. As of June 25, 2010, Petitioner had not provided HUD with a copy of his current pay stub. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 8.) The Secretary's proposed repayment schedule is \$158.00 per month, which would liquidate the debt in approximately three years as recommend by the Federal Claims Collection Standards, or 15% of Petitioner's disposable income. (*Id.*)

### Discussion

Petitioner has provided no evidence that the Subordinate Note in the amount of \$5,743.90 was paid. (Dillon Decl., ¶ 9.) Petitioner requested a copy of his file, and the Financial Operations Center of HUD sent Petitioner a copy of this file on June 25, 2010. (Dillon Decl., ¶ 10.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause financial hardship. On June 15, 2010, this Court ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is either unenforceable or not past due. (Notice of Docketing, Order, and Stay of Referral, dated June 15, 2010.) Petitioner was also ordered to file documentary evidence proving that repayment of the debt would cause him financial hardship. (Order, dated September 29, 2010) Petitioner failed to comply with both Orders.

This Office also ordered the Secretary to file the proposed repayment schedule required under 31 C.F.R. § 285.11(3)(2)(ii), as well as documentary evidence proving that Petitioner's alleged debt to HUD is enforceable and past due. (*Id.*) On July 16, 2010, the Secretary filed the Secretary's Statement, setting forth the documentary evidence in support of the claim against Petitioner for the debt owed to HUD. (Sec'y Stat.)

The September 29, 2010 Order stated that "[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding."

To date, Petitioner has failed to comply with all of the Orders issued by this Office to provide evidence that would prove that the subject debt is unenforceable or not past due, or provide evidence to support any claim that repayment of the debt would create a financial hardship for him. Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing offices, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party* (emphasis added).

Therefore, Petitioner's non-compliance with the Orders issued by this Office also supports finding against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations. (*Id.*)

The Secretary proposes a repayment schedule of \$158.00 per month, which would liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9.) I find that Petitioner is indebted to HUD in the amount claimed by the Secretary.

**ORDER**

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.



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H. Alexander Manuel  
Administrative Judge

January 6, 2011